

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

RAYMOND EDUARDO DIAZ,	§	
	§	
v.	§	2:10-CV-175
	§	
UNITED STATES OF AMERICA	§	

**REPORT AND RECOMMENDATION TO DISMISS
28 U.S.C. § 2255 MOTION TO VACATE,
SET ASIDE, OR CORRECT SENTENCE**

On July 19, 2010, defendant filed with this Court a “Memorandum of Law in Support of Petitioner’s [sic] Motion for Relief Pursuant to 28 U.S.C. § 2255 (2) and (4).” This pleading was construed as a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. On July 20, 2010, the Court ordered defendant to submit a form motion, as required by the local rules, within twenty days. On August 2, 2010, defendant filed a “Motion Requesting Leave to Correct, and [sic] Amend Petitioner’s [sic] § 2255 Motion with Newly Discovered Evidence.” On August 3, 2010, the Court granted defendant’s motion and directed him to file his amended or corrected motion on or before September 20, 2010.

As of this date, defendant has not filed any response to the Court’s August 3, 2010 Order and is in direct disregard of the Court’s Order. Moreover, defendant has not communicated with the Court, in any manner, with regard to this case since his August 2, 2010 motion. It is the opinion of the undersigned defendant has neglected his case to such an extent that it warrants dismissal.

RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the “Memorandum of Law in Support of Petitioner’s [sic] Motion for Relief Pursuant to 28 U.S.C. § 2255 (2) and (4)” filed by defendant RAYMOND EDUARDO DIAZ be DISMISSED for want of prosecution.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 3rd day of January, 2011.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

* NOTICE OF RIGHT TO OBJECT *

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).